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IN THE

SUPREME COURT OF THE UNITED STATES

No. 577

MRS LYDIA SANDOZ HASSAN, Administratrix of the Estate of Owen J. Sandoz,

Petitioner,

versus

A. M. LANDRY & SON, INC., and THE TRAVELERS INSURANCE CO.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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Respondents pray that the application for a writ of certiorari to review the decision of the Circuit Court of Appeals for the Fifth Circuit, entered on July 26, 1963, be denied.

OPINIONS BELOW.

District Judge J. Skelly Wright by minute entry dated November 6, 1961, granted the motion of respondents

to dismiss and alternatively for summary judgment. (R. p. 22; Appendix "A.") On November 15, 1961, judgment was entered in favor of respondents and against the plaintiff. (R. pp. 22, 23; Appendix "B.") District Judge Herbert W. Christenberry by minute entry dated December 27, 1961, granted a motion to reconsider the judgment, but denied a motion to vacate the judgment of dismissal. (R. p. 30; Appendix "C.") An appeal was taken from this judgment by petitioner, and the case was unanimously affirmed by the Court of Appeals for the Fifth Circuit, and reported in 321 F. (2d) 570 (5th Cir. 1963), which opinion is set out in full in Appendix "B" of petitioner's brief.

QUESTION PRESENTED.

The sole question presented is: May petitioner as personal representative file suit on behalf of beneficiaries, when the claims of all beneficiaries have been settled and compromised, in a settlement which was approved by a Court of competent jurisdiction, and was consummated by the duly qualified representative of the beneficiaries with the active cooperation of the petitioner.

STATEMENT OF THE CASE.

This case represents a claim by a party to an overall settlement agreement, seeking to assert rights on behalf of certain beneficiaries, which rights have already been released by the same beneficiaries for a total consideration of $46,960.00.

Owen J. Sandoz died in a helicopter accident in the Gulf of Mexico on June 1, 1958. The mother of the minor

children of the deceased, who was the duly appointed and qualified tutrix and guardian, after obtaining Court approval, settled her claim individually and on behalf of the minor children with respondents A. M. Landry & Son, Inc., and The Travelers Insurance Company, and respondents were given a full and complete release. The grandmother of the children, petitioner herein, filed suit on May 31, 1961, for the benefit of the mother of the children, individually, and for the benefit of the minor children, against the defendants, respondents herein, A. M. Landry & Son, Inc., and The Travelers Insurance Company.

Defendants-appellees A. M. Landry & Son, Inc., and The Travelers Insurance Company moved for dismissal and alternatively for summary judgment. (R. pp. 4, 5.) Hearing on this motion was held on October 18, 1961, and after argument of counsel, counsel for plaintiff was given ten days to file additional evidence. (R. pp. 21, 22.) No evidence was filed by counsel for the plaintiff. By minute entry dated November 6, 1961, District Judge J. Skelly Wright granted the motion of defendants-appellees to dismiss and alternatively for summary judgment, citing as authority the case of *Civil v. Waterman Steamship Corporation*, 2 Cir., 217 Fed. (2d) 94. (R. p. 22; Appendix "A.") On November 15, 1961, judgment was entered in favor of defendants-appellees and against the plaintiff, rejecting her demands and dismissing her suit with costs. (R. pp. 22, 23; Appendix "B.")

Counsel for the plaintiff filed a motion to recall and vacate judgment of dismissal, requesting that the dismissal be reconsidered and vacated. (R. p. 23.) Between the time of filing and hearing of said motion, the

case was reallotted to District Judge Herbert W. Christenberry. Hearing on this motion was held before Judge Christenberry, and after argument of counsel, the Court granted the motion to reconsider the judgment of dismissal, and denied the motion to vacate the judgment of dismissal. A minute entry dated December 27, 1961, was entered to that effect. (R. p. 30; Appendix "C.") Plaintiff-appellant then filed a notice of appeal from this judgment and order dismissing the case. (R. p. 31.)

After argument, the Court of Appeals for the Fifth Circuit unanimously affirmed the judgment of the lower Court dismissing the suit of petitioner. No petition for rehearing was filed by petitioner.

REASON FOR DENYING THE WRIT.

The only reason petitioner advances in support of the granting of the writ is that it is claimed that the decision of the Court of Appeals for the Fifth Circuit violates the letter and spirit of the Jones Act, 46 U. S. C. 688. The reason advanced is inadequate, insufficient, and incorrect. Furthermore, there has been no showing whatsoever of special and important reasons sufficient for this Honorable Court to exercise its discretion and grant the writ requested by petitioner.

The decision in this case in no way violates either the letter or spirit of the Jones Act, but, on the other hand, is in conformity with the Act. The Jones Act, 46 U. S. C. 688, provides that in case of death, ". . . the personal representative of such seaman may maintain an action for damages . . ." This means only that the per-

sonal representative is to file suit, but this does not state or mean that only the personal representative may settle the claim before institution of suit. In the instant proceedings, the Court of Appeals for the Fifth Circuit correctly recognized a settlement by all beneficiaries, which settlement received state court approval, and which settlement was effected two years before the nonbeneficiary petitioner filed suit. The party who settled all claims pursuant to court authority and approval was in a "fiduciary" relationship to the other beneficiaries, as she was the duly qualified, authorized, and empowered tutrix and guardian of the minor children.

In support of the foregoing, and clearly illustrating that neither the letter nor spirit of the Jones Act was violated, is the case of *Larry v. Chicago B. & Q. R. Co.*, 74 Fed. Supp. 798 (U. S. D. C., E. D. Mo., 1947), which is a case under the Federal Employers' Liability Act, 45 U. S. C. 51, *et seq.*, which Act the Jones Act adopts by reference. This case involved a widow, who was the sole heir, who filed suit under the Federal Employers' Liability Act as personal representative against the employer of the deceased. The defendant alleged in its defense that the claim, prior to the filing of the suit, was settled in full with the widow. It was strongly contended by the plaintiff widow, personal representative, that the right of action rests exclusively in the personal representative, that the personal representative only can assert such right of action and, therefore, only the personal representative can settle and discharge the right of action. The Court rejected this contention and held that the settlement by the beneficiary was a defense to the action. The Court said on page 800 of the opinion:

"See also McKeigue v. Chicago & North Western R. R. Co., 130 Wis. 543, 110 N. W. 384, Loc. cit. 385, 11 L.R.A., N.S., 148, 118 Am. St. Rep. 1038 10 Ann. Cas. 554). 'A release, compromise and settlement of the claim by the beneficiaries entitled to the proceeds of a recovery will bar a subsequent action by them or for their benefit.' 17 C. J. p. 1247, 'Death'; See also 25 C. J. S. 'Death,' Sec. 47 (c).

"For authorities from State courts which support a plea of settlement as a valid defense under the circumstances presented by the record in this case see: Kennedy v. Davis, 171 Ala. 609, 55 So. 104, Ann. Cas. 1913B, 225; Guldager v. Rockwell, 14 Colo. 459, 24 P. 556; Gipe v. Pittsburgh, C. C. & St. L. Ry. Co., 41 Ind. App. 156, 82 N. E. 471; Christie v. Chicago, R. I. & P. R. Co., 104, 133 Tenn., 217, 180 S. W. 163; McKeigue Iowa, 707, 74 N. W. 697; Doyle v. New York, O & W. R. Co., 66 N. Y. 398, 72 N.Y.S. 936; Spitzer v. Knoxville Iron Co. v. Chicago & N. W. R. Co., 130 Wis. 543, 110 N. W. 384, 11 L.R.A., N. S., 148, 118 Am. St. Rep. 1008; 10 Ann. Cas. 544; Wenholz v. New Amsterdam Casualty Co., La. App., 181 So. 222."

The Court further held, and constituting a sound legal basis for the decision independent of the above, that if the plaintiff would collect for a claim the beneficiary had previously settled, the defendant would have a right of action against the beneficiary to recover the amount of the settlement.

CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

ERNEST A. CARRERE, JR.,
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New Orleans, La.,
Counsel for Respondent.

Of Counsel:
JONES, WALKER, WAECHTER, POITEVENT,
CARRERE & DENEGRE,
GEORGE DENEGRE,
DONALD L. KING.

CERTIFICATE.

I hereby certify that a copy of the foregoing brief has been served upon opposing counsel of record by placing same in the United States mail with adequate postage affixed thereto.

APPENDIX "A."

ORDER GRANTING MOTION OF DEFENDANTS TO DISMISS AND, ALTERNATIVELY FOR SUMMARY JUDGMENT

Filed: November 14, 1961

MINUTE ENTRY

November 6, 1961 Judge Wright

This cause came on for hearing at a former day, on the motion of the defendants to dismiss and alternatively for summary judgment, and after hearing argument of counsel for the respective parties, the matter was taken under advisement by the Court.

Whereupon, and upon due consideration thereof:

IT IS ORDERED by the Court that the motion of the defendants, to dismiss and alternatively for summary judgment, be, and the same is hereby, GRANTED.

AUTHORITY

Civil v. Waterman Steamship Corp., 2 Cir., 217 F. (2d) 94.

APPENDIX "B."

JUDGMENT

(Filed: Nov. 17, 1961)

This cause having been heard at a former day on the motion of the Defendants to dismiss and alternatively for Summary Judgment, and the Court after due consideration thereof having GRANTED said motion.

IT IS ORDERED, ADJUDGED AND DECREED that judgment be, and is hereby, entered in favor of the Defendants, A. M. Landry & Sons, Inc., and The Travelers Insurance Company and against the plaintiff, Mrs. Lydia Sandoz Hassan, Administratrix of the Estate of Owen J. Sandoz, deceased, rejecting the demands of said plaintiff and dismissing her suit with costs.

November 15, 1961.

APPENDIX "C."

HEARING ON MOTION OF PLAINTIFF TO RECONSIDER DEFENDANT'S MOTION FOR DISMISSAL AND TO VACATE JUDGMENT OF DISMISSAL

(Filed: Jan. 3, 1962)

MINUTE ENTRY December 27, 1961

JUDGE CHRISTENBERRY

This cause came on for hearing this day on motion of Plaintiff to reconsider Defendant's motion for dismissal and to vacate judgment of dismissal.

PRESENT: Raymond H. Kierr, Esq.,
Attorney for Plaintiff

Donald L. King, Esq.,
Attorney for Defendants

Argument.

IT IS ORDERED that the motion of plaintiff to reconsider Defendant's motion for dismissal be, and the same is hereby, GRANTED.

IT IS FURTHER ORDERED that the motion of Plaintiff to vacate judgment of Dismissal be, and the same hereby, DENIED.